

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of ----- )  
PUBLIC UTILITIES COMMISSION ) DOCKET NO. 2008-0273  
Instituting a Proceeding to )  
Investigate the Implementation )  
of Feed-In Tariffs. )  
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PUBLIC UTILITIES  
COMMISSION

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**HAWAII BIOENERGY, LLC'S RESPONSES TO  
THE NATIONAL REGULATORY RESEARCH INSTITUTE'S  
THRESHOLD NON-LEGAL OR OTHER ISSUES OR QUESTIONS**

**EXHIBIT 1**

**and**

**CERTIFICATE OF SERVICE**

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**HAWAII BIOENERGY, LLC'S RESPONSES TO  
THE NATIONAL REGULATORY RESEARCH INSTITUTE'S  
THRESHOLD NON-LEGAL OR OTHER ISSUES OR QUESTIONS**

COMES NOW Hawaii BioEnergy, LLC ("HBE"), by and through its attorneys, Morihara Lau & Fong LLP, and hereby respectfully submits its responses to the threshold non-legal or other issues or questions in Appendix C of the National Regulatory Research Institute's Scoping Paper titled "Feed-in Tariffs: Best Design Focusing Hawaii's Investigation," dated December 2008 ("NRRI Scoping Paper"). See Exhibit 1 attached hereto.

In connection with the requested cost information/data set forth in Appendix A of the NRRI Scoping Paper, HBE is unable to provide the requested cost information/data at this time. HBE's proposed renewable energy projects (i.e., biomass projects) that HBE had hoped may benefit from the establishment and implementation of feed-in tariffs in this proceeding are still in the design and/or development stages, and have not yet reached the level of design and/or development that would yield the type of cost information/data requested in the various tables set forth in Appendix A. HBE also believes that cost information/data

requested would vary depending to a certain degree on the size of the proposed renewable energy projects, which for biomass projects in particular could vary significantly. Currently, HBE does not have the type of cost information/data to provide the full range of possible project sizes that HBE believes would be meaningful and helpful to the Commission.

HBE's responses noted above are filed pursuant to and in accordance with the Commission's directive, dated December 11, 2008.

DATED: Honolulu, Hawaii, January 26, 2009.

A handwritten signature in black ink, appearing to read "Kent D. Morihara", is written over a horizontal line.

KENT D. MORIHARA  
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Morihara Lau & Fong LLP  
Attorneys for Hawaii BioEnergy, LLC

# EXHIBIT 1

	<b>Other (Non-Legal) Threshold Issues</b>	
4.	<p>Feed-in tariffs, if approved by the Commission, would join an array of legislative and regulatory initiatives to boost production of renewable in Hawaii. Those initiatives include PURPA, the renewable portfolio standard, net metering and various distributed generation actions. Are there overlaps, redundancies, gaps among these multiple initiatives? What is the independent purpose of each of these, in relation to the others?</p>	<p>HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue No. 1 (see page 8 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.</p>
	<b>Process and General Feed-In Tariff Issues</b>	
5.	<p>Please explain the criticality of completing the "best-design" phase of this investigation by March 2009 and having project-based FiTs in place by July 2009 as called for in the Agreement.</p>	<p>However, having said the above, the following contains HBE's preliminary thoughts/position on this matter. Consistent with its prior submission in this proceeding on December 22, 2008 in connection with the proposed regulatory schedule, it is HBE's position that it is NOT critical for the "best-design" phase of this investigation to be completed by March 2009 and to have project-based FiTs in place by July 2009. The information leading to those dates being set by the parties to the Agreement is not available to HBE. However, as HBE has stated before, HBE believes that it would be in the best interest of the parties in this proceeding to allow for adequate time to develop a sound record on which to base the decisions to be reached, rather than expediting the proceeding to comply with dates that were agreed to outside of this proceeding by only a few parties to this proceeding.</p>
6.	<p>Please explain why project-based FiTs are superior to other methods that require a utility to purchase renewable electricity.</p>	<p>HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue No. 3 (see page 8 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.</p>

7.	Please quantify the costs over avoided costs of an open-ended PBFIT program assuming the utility meets the RPS goals set forth in the Agreement.	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue Nos. 7-9 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.
8.	Please quantify the benefits of lowering oil imports, increasing energy security, and increasing both jobs and tax base for the state mentioned in the Agreement.	<p>However, having said the above, the following contains HBE's preliminary thoughts/position on this matter. HBE does not have available to it the data needed to provide the quantification of benefits requested in the question. Among the data that HBE believes would be needed for the quantification of benefits would be the total amount of oil imported by the State, the cost of oil not being available to Hawaii, and the tax and other economic benefits associated with additional jobs and investment in the State. The utilities and government agencies some of which are parties in this proceeding are most likely to have the applicable data/information needed and able to perform the quantification of benefits analyses (either individually or collectively) requested by this question.</p> <p>For example, according to DBEDT data on Hawaii's Total Energy Expenditures for fuel for transport and electricity generation, \$15.7 million dollars per day flow out of Hawaii for energy imports. (If one assumes that 93% of energy sources are imported (NREL estimate)). Local, renewable energy production would reduce expenditure on import, increase energy security both by reducing imports and diversifying the energy base, and generate jobs, wealth, and tax revenue for the State of Hawaii. The degree of diversification and economic impact would clearly depend on the number and type of renewable energy projects developed.</p>
9.	Is the goal to encourage as much use of renewable resources as possible as soon as possible, or is it to encourage the orderly introduction of renewable resources based upon cost effectiveness?	HBE is not entirely clear as to the meaning and context of the word "cost effectiveness" used as part of this question. Notwithstanding the above, the following contains HBE's preliminary thoughts/position on this matter. HBE believes that it is in the best interest of the State to encourage as much use of renewable resources as soon as possible. However, HBE recognizes that the "mix" of renewable resources is important as well as the level of renewable resources. HBE also recognizes that while the goal should be to move toward use of as much renewable resources as quickly as possible, that the utilities' ability to incorporate renewable resources reliably and safely will be a factor in its adoption into the grid.

10.	How long a period should exist between mandatory Commission reviews of the PBFiTs?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue No. 11 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.
<b>PBFiT General Design Issues</b>		
11.	Do each of the technologies listed as a renewable resource in the RPS legislation require a PBFiT?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue Nos. 7-8 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.
12.	Should PBFiTs for certain technologies be established now while others are deferred?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue Nos. 7, 8 and 11 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.

13.	Should the Commission cap purchases under PBFiT's? If yes, what is the maximum amount? Should individual caps be set for each technology? What period should the cap cover? What is the measurement for the cap (e.g., dollars, percent of sales, kW, or kWh)?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue No. 10 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.
14.	What limitations exist for integrating renewable resources onto the grid? Should these limits affect the PBFiT design or caps, or are they just another cost that developers must consider?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue No. 10 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.
<b>Specific Tariff Design Issues</b>		
15.	How long should the Commission set for the PBFiT's term of obligation? Should it be different for different technologies? Is there a common basis (e.g., a conservative estimate of expected useful life) for establishing the term of obligation? On what basis should a utility pay for electricity after the term expires?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue No. 7 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.

16.	Should PBFiT require the utility to purchase the project's gross or net output at the PBFiT price?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue No. 7 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.
17.	How should the utility determine the price paid for renewable energy not covered by a PBFiT (e.g., purchases above the cap or beyond the term obligation)?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue No. 7 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.
18.	What inflation adjustment, if any, should the PBFiT include, using what base and indexes?	<p>However, having said the above, the following contains HBE's preliminary thoughts/position on this matter. The PBFiT program should be indexed to inflation, given the longevity of the technology and the typical long-term nature of the contracts.</p> <p>Inflation adjustments should be made to the tariffs themselves, in line with electricity price inflation, not to the input costs. Investors must be given security vis a vis other electricity investments.</p>
19.	What milestones (e.g., commercial operations) should the Commission set to determine eligibility for the PBFiT? Are Hawaii's RPS statute requirements an eligibility requirement? Should utility affiliates be eligible to receive the PBFiT price?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue Nos. 7-8 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.

20.	Please comment on the need for stepped tariffs based upon locations, size, fuel mix, and output.	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue No. 7 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.
21.	Under what circumstances should the PBFiT price be time-differentiated?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue No. 7 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.
22.	How highly leveraged (i.e., bearing how much debt compared to equity) are these projects?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue Nos. 7-8 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.
23.	Does a PBFiT create a financing environment through a reliable revenue stream from the ratepayer to the investor, allowing for greater leverage and thus lower cost financing than would be available under an avoided-cost tariff?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue Nos. 1-3 (see page 8 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.

24.	If the PBFiTs are to encourage early development of resources, does the reasonable return need to be set higher for these early tariffs? Are there reasons other than encouraging early development to set the profit margin higher, such as risks associated with early implementation? Is this true across all project classes?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue No. 7 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.
25.	Does the current "credit crunch" affect the financing costs, including expected profits by equity investors?	However, having said the above, the following contains HBE's preliminary thoughts/position on this matter. Yes, credit availability has diminished and financing costs have generally increased as a result of the current "credit crunch" affecting the nation including Hawaii. The ability to access financing for nascent and emerging technologies has diminished in the current financial environment as there is limited available capital and an increased aversion to risk.
	<b>Related Issues</b>	
26.	Please provide a quantitative analysis demonstrating the public interest aspect of the concept that 10% of the utility's purchases under the feed-in tariff PPA should be included in the utility's rate base through 2015. In addition to the overall prudence of the rate base recommendation, please address the 10% and 2015 date included in the Agreement.	<p>In HBE's view, this question is based on the premise that it is in the public interest to include 10% of purchases under the feed-in tariff in the utility's rate base. HBE does not have available to it the information that the parties to the Agreement used in concluding that it was in the public interest to include 10% of the utility's purchases in rate base. HBE assumes that the parties to the Agreement concluded that without allowing the utility to earn a return on the power it purchases from other providers, that the utility would not otherwise be motivated to purchase electricity from renewable sources or to agree to establish a feed-in tariff. The parties in this proceeding that are best positioned to provide the quantitative analysis of the public interest of allowing utility purchases in the rate base are the parties to the Agreement.</p> <p>HBE does not have information available to it that would allow a determination to be made whether it is in the public interest to allow the utility to earn a return on renewable electricity purchased as opposed to requiring the utility through regulatory orders and/or legislative mandates to establish a feed-in tariff or move toward set renewable levels.</p>

27.	What is the appropriate rate of return for the PBFiT portion of rate base that consists of a mandated purchase with guaranteed recovery and no capital outlay?	It is HBE's understanding that this question is asking what the rate of return for the utility should be for the PBFiT portion included in rate base, given that the renewable electricity was generated without any capital outlay by the utility. While HBE believes that intuitively the rate of return should be lower than the authorized ROR, HBE does not have a response at this juncture as to what the appropriate discount should be.
28.	Are there preferable utility incentives, other than putting PBFiT revenues into the rate base, to encourage the development of renewable resources?	At this juncture, HBE does not have a response to this question.
29.	Should the PBFiT require developers to assign credits (e.g., investment tax credits, renewable energy credits, and carbon credits) earned from a project to the purchasing utility as a condition of receiving payments under the PBFiT? If not, how should these credits be included in the estimation of a typical project's cost?	HBE believes that this question directly touches on the issues set forth in the Stipulated Procedural Order approved with modifications by Commission Order issued on January 20, 2009, in particular Issue No. 7 (see page 9 of January 20, 2009 Order), and for which the Parties are to submit Opening Statements of Positions on by no later than February 25, 2009 (see page 12 of January 20, 2009 Order). In connection with this, HBE is not prepared to provide a response or position to this question at this time, as it is still in the process of analyzing the issues in this docket, and instead will be in a position to provide its response to the docketed issue as part of the Opening Statement of Position.

## **CERTIFICATE OF SERVICE**

I hereby certify that on this date I served copies of the foregoing document on the following parties, by causing copies hereof to be mailed, postage prepaid, properly addressed or hand delivered to the following:

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DATED: Honolulu, Hawaii, January 26, 2009.



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